

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7118 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARGOVINDBHAI DAHYABHAI PATEL

Versus

PRABHUDAS RAICHAND SANGHANI

Appearance:

MR JT TRIVEDI for Petitioners
MR MIHIR H JOSHI for Respondents Nos.1 to 14
Ld.AGP for Respondent No. 15

CORAM : MR.JUSTICE M.R.CALLA

Date of Order: 10/09/1999

COMMON ORAL ORDER

This Special Civil Application has been filed
against the order Annexure.A passed by the Gujarat

Revenue Tribunal in Appeal No.3 of 1997 on 28th May 1997 whereby the appeal of the present petitioners was dismissed against the order dated 26th February 1997 passed by the Joint Charity Commissioner, Vadodara in Application No.51/7/93 and with prayer to grant permission to the petitioners for instituting Suit as per draft plaint with such modification as may be required owing to passage of time.

2. The petitioners have come with the case that an application under Sec.51 of the Bombay Public Trusts Act, 1950 read with Rule 27 of the Rules made thereunder was filed by the petitioners before the Joint Charity Commissioner, Vadodara seeking permission to institute Civil Suit in the Court of District Judge, at Navsari. This application was rejected by the Joint Charity Commissioner on 26th February 1997. Aggrieved from this order dated 26th February 1997, the petitioners preferred an appeal under Sec.37(2) of the Bombay Public Trusts Act before the Gujarat Revenue Tribunal, at Ahmedabad and the same was rejected by the Tribunal on 29th June 1998. The order passed by the Joint Charity Commissioner has been assailed on the ground that in the matter of grant of permission for institution of Suits relating to public Trusts, the function of the Joint Charity Commissioner is of administrative nature and while deciding the grant of leave for institution of Suits, the aspects to be considered are reliefs claimed in the Suit within the scope of Sec.50 of the Act, the plaintiffs must be the persons interested in the Suit in the Trust, and that the persons desirous of filing the Suit must have a good prima good case. Mr.J.T.Trivedi, learned Counsel for the petitioners has submitted that in the present case, all these requirements were available and yet the application was rejected by the Joint Charity Commissioner and the same has been upheld by the Gujarat Revenue Tribunal whereas the concerned Charity Commissioner could not go into the actual merits of the matter. It has also been submitted that the present Trustees had created another Trust in the name of "108 Jinalai Trust" and were collecting money in the name of the said Trust, which is not registered according to the information of the petitioners.

3. With the averments and the prayer as above, the present Special Civil Application was preferred before this Court on 31st August 1998. On 29th September 1998, the notice returnable on 8th October 1998 was issued by this Court and on the same date, Mr.Mihir Joshi, learned Counsel had appeared on behalf of respondents nos.1 to 14 and he waived the service of notice. An

affidavit-in-reply dated 8th October 1998 was filed on behalf of the respondents nos.1 to 14 along with large number of documents seeking to traverse the petitioners' case and thereafter an affidavit-in-rejoinder dated 15th October 1998 was filed on behalf of the petitioners. The deponent of the affidavit-in-reply filed on behalf of the respondents nos.1 to 14 has come with the case that he is a Trustee of Shrimad Rajchandra Ashram, Dhaman Trust and while defending the impugned orders it has been stated that on 26th November 1981, the Scheme for the administration of the Trust was sanctioned by the Joint Charity Commissioner, Vadodara. For becoming member of the Trust it is incumbent that the person should be a staunch believer and follower particularly of the traditions, conventions and practices of the Trust and also a 'Hitadhikari'. On 17th May 1986, the petitioners and some other persons created a parallel Trust in the name of Shrimad Rajchandra Mumukshu (Anuyai) Mandal, Dhaman with a nominal capital and the constitution of this Trust had as its object "responsibility" to see that the affairs of the respondent Trust were being conducted by the Trustees in a proper manner and also a "duty" to take over the management and affairs of the respondent Trust in the event of a "situation" necessitating such interference. All the three petitioners attended the meeting at which the constitution was approved. The said constitution, without any doubt, indicates that the interest of the petitioners and that of the respondent Trust are not at all identical and in fact are absolutely at loggerheads. The petitioners could never be said to be "Hitadhikaris" and the petitioners nos.1 and 2 were also on the Managing Committee of the Trust. In furtherance of the sole objective to take over the respondent Trust, in a step, most ill suited for religious Trusts, a large group of persons under the leadership of the petitioners suddenly and without ever being interested in the respondent Trust as believers, followers or donors attempted to become members. None of the persons fulfill the criteria and parameters for becoming members under the scheme which was extensively pointed out by the respondent Trust pursuant to which Misc. Application No.6 of 1987 came to be filed by two of the representatives of the Group in November 1986 for becoming members of the Trust and this application came to be rejected by the Joint Charity Commissioner on 26th May 1987. Against this order dated 26th May 1987 passed by the Joint Charity Commissioner, Special Civil Application No.7068 of 1987 had been filed in which the interim relief was refused. Thereafter, other persons representing the same group filed Civil Suit No.58 of 1990 in the Court of Civil Judge, Senior Division,

Navsari for taking all persons as members of the respondent Trust and the notice of motion was rejected by order dated 25.9.1992 and later on the order dtd.18th October 1993 was passed. In the meantime, the Application No.51/7/93 was filed in July 1993 before the Joint Charity Commissioner which was rejected on 26th February 1997 and the said order was confirmed by the Tribunal by its order dated 27th May 1997. It has been stated that the petitioners are not at all the persons interested in the Trust or its affairs as contemplated under the Act.

4. I have gone through the pleadings and I have heard learned Counsel for both the sides. I find that the petitioners had sought consent from the Joint Charity Commissioner, Vadodara Division, Vadodara, to institute the Civil Suit in the District Court against the Trustees under Sec.51(1) on the ground that there was a breach of Trust Deed by the Trustees. The Gujarat Revenue Tribunal has considered that the words, 'breach of trust' are nowhere defined in the Act but under sub-section (3) of the Indian Trusts Act, 1882, the same have been defined and according to Section 2(2) of the Public Trusts Act, the words and expressions used but not defined in the Bombay Public Trusts Act, but even in the Indian Trusts Act, 1882 shall have the meaning assigned to them in that Act. While giving consent the Charity Commissioner has to satisfy himself that it is a Public Trust registered under the Act and there is an alleged breach of trust. The Charity Commissioner has to see whether there is prima facie good ground for filing the suit under Section 50 and whether the proposed suit is not frivolous or vexatious. The grounds that the elections were not held for three years, the vacancies were not filled up, the Trustees had gone abroad without intimation to the Charity Commissioner have not been found to be adequate by the Charity Commissioner to accord consent for institution of the suit. The contention that there was financial loss because donations were not accepted and this amounts to breach of trust was not accepted by the Joint Charity Commissioner. The petitioners are of course required to be heard before deciding the question of granting or refusing the permission. The words, 'after making such inquiry as he deems fit' as they occur in Section 51 of the Act show that the Charity Commissioner is required to adopt a judicial procedure for deciding the question for granting or refusing the permission for filing the suit. In the facts of the present case, this requirement has been followed. There is no doubt that it has been held in the case of Mahant Ratandasji v. Babubhai Dave, reported in AIR 1972

Gujarat 216 that the function of the Charity Commissioner in granting or refusing the permission is purely administrative and he may not go into the merits of the case as such except for the purpose of assessing the prima facie case, merely because the Charity Commissioner applies his mind to assess as to whether there is a prima facie case or not, it cannot be said that the Charity Commissioner while deciding the question as a part of his administrative function, could not look into the facts of the case so as to assess as to whether the suit intended to be filed for which the consent or permission was sought was frivolous, vexatious or not. For such a limited purpose, it can also examine as to whether there was any element with regard to the question of alleged breach of trust. There is no question of proved breach of trust. The Charity Commissioner may examine from the point of view whether there is a fair case for trial before the Civil Court, whether there is a prima facie case or not and for such purposes, even if it is assumed that he has discharged administrative function, the order passed by the Charity Commissioner cannot be rendered to be illegal. How and in what manner he has to make the limited inquiry for the purpose of arriving at the decision either way, i.e. to grant or refuse the permission to file the suit is certainly for the Charity Commissioner to decide because the Section provides for making such inquiry as he deems fit and therefore, if he thinks fit, he has to hold the inquiry and that too in a manner which he deems fit and if he refuses to grant permission, he has to record the reasons for the same. The order dated 20th February 1997 passed by the Joint Charity Commissioner in the instant case is an elaborate order duly supported by reasons and it shows that the order has been passed after due and active application of mind and consideration of the facts which were made available before him and looking to the entirety of the matter and the background of the litigation, he has come to the conclusion that it was not at all a case for granting permission for filing the suit. Such an order passed by the Joint Charity Commissioner has been upheld by the Gujarat Revenue Tribunal. In the opinion of this Court, it does not warrant any interference. So far as the argument that the necessary orders should have been passed by the Joint Charity Commissioner within the period of six months as required under Section 51 of the Act and because the order was not passed within the period of six months, the Joint Charity Commissioner had lost the jurisdiction to pass the order appears to be an argument of no consequence in the facts of the present case. The Tribunal has categorically recorded that the perusal of the records of the Joint Charity Commissioner

show that the present petitioners themselves had submitted applications for adjournments requesting to direct the Trust to produce certain documents as they themselves were unable to produce the documents in their favour. The Tribunal has therefore rejected this contention raised on behalf of the petitioners though the Charity Commissioner had failed to pass the necessary orders within a period of six months. The object of fixing time limit of six months for granting or refusing the permission has been made for the benefit of the applicants who apply for such permission under Sec.51. However, in the cases when the applicants themselves seek time and it is because of their own applications and because of their conduct, if the orders cannot be passed within the period of six months, they cannot be allowed to raise the grievance in case the ultimate result is not in their favour and the permission is refused. The legal proposition that the matters to be decided within a period of six months goes very well in the language of Sec.51(1) itself but the principle is well settled that one cannot be allowed to take advantage of his own wrong. If the petitioners themselves were party for prolonging the proceedings beyond the period of six months, now that the permission has been refused, they cannot be heard raising the grievance that the Joint Charity Commissioner could not pass the order after the expiry of six months merely because the permission has been refused. The justification for taking this view by this Court is obvious because had the permission been granted to them by the Joint Charity Commissioner, they would not have raised this grievance that it has been granted after the expiry of six months. Therefore, in the opinion of this Court, the Gujarat Revenue Tribunal has rightly rejected this contention and has rightly observed that the contention that the Joint Charity Commissioner failed to pass the necessary orders within a period of six months does not deserve any consideration.

5. Besides this, in such matters, the authorities which are charged with the function of granting or refusing permission for filing the suits have to consider the whole background in which the permission or consent for filing the suit is sought. The litigious perseverance which has been exploited by the petitioners in the facts of this case has been rightly noticed and the Tribunal has rightly observed that the petitioners had taken recourse to many litigations against the Trustees and for every small and technical breach, the Trustees cannot be dragged to the Court of law. The Joint Charity Commissioner while passing the detailed order has given reasons as to why he was refusing to

accord the consent for instituting the suit against the Trust and it has also been rightly noticed that the alternative remedy was available to the petitioners for seeking the same reliefs. In any case, it is essentially a writ in the nature of certiorari and this Court finds that the impugned orders passed by the Joint Charity Commissioner and the Gujarat Revenue Tribunal do not suffer from any error of fact or law apparent on the face of the record nor there is violation of the principles of natural justice not it can be said that any of the orders has been passed without jurisdiction or that there is lack of jurisdiction and as such, this Court does not find any ground to interfere with the impugned orders. The petitioners are not entitled to any of the reliefs claimed by them and this Special Civil Application is hereby dismissed. The notice is hereby discharged.

Sreeram.